



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Denial of a Driveway Access
Permit to Clement Fox

Case No. TR-01-0053

FINAL DECISION

By letter filed on November 28, 2001, Clement Fox requested a hearing pursuant to Wis. Stat. § 86.073(3), to review the Wisconsin Department of Transportation's denial of his application for a permit to construct a driveway access from State Highway 178. In response to the request, a telephone prehearing conference was conducted on December 10, 2001, and an evidentiary hearing was scheduled for April 5, 2002, in Eau Claire, Wisconsin. On March 19, 2002, the Department of Transportation (Department) submitted a stipulation of facts and the parties agreed that this matter could be decided on the basis of the stipulated facts and written argument.

Accordingly, the evidentiary hearing was cancelled and a briefing schedule was established. The Department submitted its initial brief along with the stipulation of facts. Mr. Fox filed a response on April 24, 2002. The Department was given an opportunity to file a reply brief; however, by letter filed on July 5, 2002, the attorney for the Department indicated he would not be filing a reply and that the matter was ready for decision.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Clement Fox
14078 St. Highway 178
Chippewa Falls, WI 54729

Wisconsin Department of Transportation, by

Attorney Paul E. Nilsen
P. O. Box 7910
Madison, WI 53707-7910

The Administrative Law Judge issued a Proposed Decision on July 30, 2002. No comments on the Proposed Decision were received. The Proposed Decision of the Administrative Law Judge is adopted as the Final Decision in this matter.

STIPULATED FACTS

The parties stipulated to the following facts:

1. In 1967, Mr. Fox purchased approximately 39.87 acres of property adjacent to the north side of State Trunk Highway 178 ("STH 178") in the Town of Eagle Point in Chippewa County. The legal description of the property is SW ¼ of the SE ¼, Section 25, Township 30 North, Range 8 West, Town of Eagle Point, Chippewa County ("the property"). The property is square shaped, and has approximately 1,318 feet of frontage on STH 178. The property abuts no public road other than STH 178.

2. Mr. Fox began farming the property in 1967, and has farmed the property continuously since then.

3. Beginning in 1967, agricultural machinery reached the property from a single driveway on STH 178, located roughly 600-800 feet west of the property's eastern boundary line.

4. In 1984, STH 178 was improved and Mr. Fox relocated the single driveway to its current location. The nearest edge of the driveway is now located approximately 17 feet west of the property's eastern boundary line. Agricultural machinery has reached the property from this driveway since 1984.

5. In 2001, Mr. Fox built a single-family residence with an attached 3-car garage and a detached storage shed on the property. The residence is located approximately 150 feet west of the property's eastern boundary line and approximately 550 feet north of STH 178. The storage shed is located approximately 100 feet northeast of the residence. The residence and the storage shed are the only structural improvements on the property.

6. About the time he built the residence, Mr. Fox built a gravel driveway from the driveway to the residence. The driveway runs parallel to the property's eastern boundary and proceeds approximately 550 feet north of STH 178. Before 2001, the driveway was an unimproved field entrance.

7. About the time he built the residence, Mr. Fox planted a lawn surrounding the residence and driveway. The lawn forms a rectangle in the southeastern corner of the property, approximately 300 feet wide, with frontage on STH 178, and 600 feet deep. Mr. Fox continues to farm the rest of the property ("the farmland").

8. On August 16, 2001, Mr. Fox applied for a driveway permit for a second driveway from his property to STH 178, to be located approximately 579 feet west of the nearest edge of the existing driveway, and approximately 722 feet east of the property's western boundary.

9. By letter dated August 24, 2001, the Department of Transportation issued driveway permit number 09-2001-13 to Mr. Fox for the existing driveway. Driveway permit number 09-2001-13 specifies that it is to serve as a shared access with the property to the east.

10. By a second letter dated August 24, 2001, the Department of Transportation denied Mr. Fox's application for a second driveway access from STH 178 to his property. The stated reasons for the denial were that "[t]here is no topographical limitation or other natural barrier that prevents the use of any part of [the Fox] property that would be served by the proposed driveway" and because "[i]t is the Department's policy that a given piece of property should be served by the minimum number of access points deemed necessary."

11. Mr. Fox appealed the denial dated August 24, 2001, to the Department of Transportation's central office.

12. By letter dated October 30, 2001, the Department of Transportation affirmed the denial of the driveway permit.

13. By letter dated November 21, 2002, Mr. Fox appealed the August 24, 2001, denial to the Division of Hearings and Appeals.

14. Agricultural vehicles using the existing driveway must travel across Mr. Fox's lawns to reach the farmlands. Mr. Fox does not like having agricultural vehicles driving on his lawns. Mr. Fox wants a second driveway for use by agricultural vehicles reaching the farmlands. Mr. Fox wishes to retain the existing driveway for use by non-agricultural vehicles traveling on the driveway to the residence. Mr. Fox wants to use the second driveway exclusively for agricultural vehicles traveling to the farmlands. Mr. Fox believes that a second driveway would make the western part of the property easier to sell. Mr. Fox is concerned about the high cost of implementing the alternatives listed in paragraph 15 below.

15. Mr. Fox could relocate the existing driveway to the west side of the residence, so that agricultural vehicles did not have to drive across the lawn or past the residence. Mr. Fox could create a frontage road, breaking off from the existing driveway and running west, parallel to STH 178, so that agricultural vehicles did not have to drive across the lawn or past the residence. Mr. Fox Could continue to use the existing driveway for both agricultural and residential uses. Implementation of these alternatives to a second driveway is within Mr. Fox's control.

16. The property currently has ingress from and egress to STH 178 by the existing driveway.

17. Mr. Fox can reach any part of the property by vehicle from the existing driveway on STH 178.

18. No topographical limitation or other natural barrier prevents reaching any part of the property from the existing driveway.

19. The Wisconsin Department of Transportation has jurisdiction over STH 178.

DISCUSSION

The only issue that must be decided is whether the Department's denial of the Clement Fox's application for a driveway access permit is reasonable. Mr. Fox has the burden of proof to show that the denial was unreasonable.

Wis. Admin. Code § Trans 231.03(2) provides:

The number of driveways permitted serving a single property frontage along a state trunk highway shall be the minimum deemed necessary by the department for reasonable service to the property without undue impairment of safety, convenience, and utility of the highway.

Using this standard, the Department determined that Mr. Fox's property could reasonably be served with a single driveway access.

Now that he has constructed a residence on the property as well as farming a portion of the property, Mr. Fox believes a second driveway access is warranted in order to have one driveway to serve his residence and a second driveway for agricultural use. Mr. Fox's reasons for having separate driveway accesses for residential use and agricultural use are related to safety and aesthetics. As his property is currently situated, farm machinery must cross the lawn of his residence in order to reach the farm fields. The safety related concern for requesting a second driveway access is to keep farm machinery away from the areas of his property where his grandchildren play. The aesthetic concern is that when the farm machinery crosses the lawn of the residence it leaves ruts and muddy holes on the lawn. A second driveway access would eliminate the need for farm machinery to cross the lawn of the residence.¹

¹ Although he did not address it in his written argument, at one time Mr. Fox apparently had a third concern that is mentioned in the parties' stipulation of fact. That concern is the western portion of his property may be difficult to sell without a separate driveway access. At this point, the concern is speculative since there is no indication in the record that Mr. Fox has any intention of selling a portion of the property. Access issues will need to be addressed if and when Mr. Fox subdivides the property in anticipation of selling a portion of it.

Mr. Fox's reasons for requesting a second driveway access to his property are understandable. However, the Department's denial of the request is reasonable. Mr. Fox knew there was only one driveway access to the property at the time he constructed a residence on the property. With a minimal amount of forethought the residence could have been situated on the property or the driveway access relocated in such a way that one driveway access could be used both for the residence and farm machinery without a need for farm machinery to cross the lawn of the residence. Alternatives undoubtedly still exist for reconfiguring the driveway to eliminate the necessity for farm machinery to cross the lawn of the residence. In short, Mr. Fox's concerns can be resolved without permitting a second driveway access to the property.

CONCLUSIONS OF LAW

The Administrator concludes:

1. Clement Fox has reasonable ingress and egress from the property described in the findings of fact. Additional driveway access from State Trunk Highway 178 is unnecessary.
2. Pursuant to secs. 86.07(3) and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

ORDER

The Administrator orders:

The Department of Transportation's denial of Clement Fox's application for a second driveway access to State Trunk Highway 178 in Chippewa County is reasonable and is affirmed.

Dated at Madison, Wisconsin on August 19, 2002.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
David H. Schwarz
Administrator

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53, to insure strict compliance with all its requirements.